

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2924 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD ISAQ @ KAYUM MOHMAD

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr. Samir Dave, A.G.P. for the respondents nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 13/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Satish R. Patel for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 24-12-1998 passed by the respondent no.1-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Prevention of Antisocial Activities, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" inter alia indicate that two criminal cases were registered against the petitioner at Madhavpura Police Station on 10-12-1998 and at Naranpura Police Station on 12-12-1998 for the offences made punishable under Secs.379 read with Sec.114 of the Indian Penal Code. Over and above that, two witnesses on assurance of anonymity have supplied information about the criminal activities of the petitioner on 13-12-1998 and 11-12-1998 respectively. One of the witnesses has stated that the petitioner with his accomplice had gone to the shop of the witness to sell a golden chain and has demanded Rs.5000/- for the same. The witness having suspicion that the said chain is a stolen property refused to purchase the same or advance any money on the same. Thereby, the petitioner got enraged and with the aid of his accomplice assaulted the witness and caused injury by a razor. That though the neighbours collected there, the petitioner having rushed to them with razor, due to fear the people dispersed and the witness did not file complaint on account of fear of the petitioner. The other witness has stated that alongwith his accomplice, the petitioner had gone to the shop of the witness with two golden bangles and asked him to advance money on a security of said bangle. The witness having refused to do the same was dragged out from his shop by the petitioner and was taken on public road and beaten by fist blows and kicks. The witness having raised alarm, passers-by gathered there, however, the petitioner having rushed to them with knife, due to fear and terror, people gathered there dispersed.

3. On the above stated material, the respondent no.1 as detaining authority has concluded that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law are insufficient to prevent the petitioner from continuing his antisocial activity which is likely to adversely affect the maintenance of public order, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that though the petitioner was in judicial custody in respect to Crs. nos.318/98 and 724/98, the detaining authority has failed to consider

the aspect of less drastic remedy of opposing and cancellation of bail available to the petitioner under Section 437(5) Cr.P.C. That on that count, the subjective satisfaction arrived at by the detaining authority having been vitiated has rendered the impugned order invalid.

5. It is a well settled proposition of law that the detaining authority while exercising discretion under Section 3(1) of "PASA" is required to consider the less drastic remedy available and such application of mind should reflect in the grounds of detention. In the instant case, the grounds of detention, copy of which is produced at Annexure"B" is devoid of any such consideration on the part of the detaining authority to prevent the petitioner from continuing his antisocial activity.

6. The affidavit-in-reply filed on the behalf of the respondents does not disclose any explanation on the part of the respondent no.1 as detaining authority as to why and under what circumstances availability of less drastic remedy to prevent the petitioner from continuing his antisocial activity was not considered and the impugned order has been passed.

7. Under the circumstances, I am constrained to hold that non consideration of availability of less drastic remedy by the respondent no.1 has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the abovestated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 24-12-1998 passed by the respondent no.1-Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner-detenu-Mahmad Isa alias Kayum Mahmad is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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